

STATE OF MICHIGAN
COURT OF APPEALS

LAURIE C. ALLER, a/k/a LAURIE C.
CHAMPION,

UNPUBLISHED
March 26, 2002

Plaintiff-Appellee,

v

MARK D. ALLER,

No. 225158
Oakland Circuit Court
LC No. 98-615291-DM

Defendant-Appellant.

Before: Saad, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce entered on December 2, 1999, and we affirm.

I. Facts and Proceedings

The parties met in the fall of 1994, after both graduated with master's degrees in business administration from the University of Michigan. At the time, defendant worked for General Motors Corporation and plaintiff worked for Johnson & Higgins. The parties became engaged in September 1995 and, in December 1995, plaintiff moved into defendant's condominium in West Bloomfield. On June 29, 1996, plaintiff and defendant married in Findlay, Ohio. Shortly after their marriage, defendant's company, Allied Signal, transferred him to London, England. Plaintiff's company also allowed plaintiff to transfer to London. After their move, however, Allied Signal transferred defendant to Paris where he worked during the week while plaintiff remained in London. During that time, defendant began to experience significant problems at work.

Defendant ultimately returned to the United States to pursue other employment opportunities. Defendant asked plaintiff to move back to the United States in December 1997 and, ultimately, the parties moved back into the condominium in West Bloomfield. Plaintiff continued to work for her company, which was purchased by Marsh & McLennan in 1997. However, defendant remained, for the most part, unemployed during the remainder of the marriage and throughout these proceedings. Plaintiff testified that the marital relationship began to break down while the couple lived in Europe, primarily because of defendant's paranoia surrounding his employment situation. She further testified that defendant directed his hostility toward her during numerous confrontations when they returned to the United States. Defendant

admitted he suffered from depression following their return from Europe, but maintained that plaintiff was primarily at fault for the breakdown in the relationship.

The parties sought marriage counseling during the spring and summer of 1998, but the relationship continued to deteriorate. Plaintiff testified that she became pregnant during the late summer of 1998, following a plea by defendant to regain their former intimacy. Defendant testified that he was surprised when plaintiff told him she was pregnant and that he suspected she was having an affair. During trial, defendant continued to express his suspicion about the paternity of the couples' son, born on April 30, 1999. Indeed, defendant refused to acknowledge his paternity of the child until the fifth day of trial, on October 26, 1999, despite receiving results of a 99.99% probability of paternity on or before October 15, 1999. At trial, defendant maintained that he believes plaintiff planned the pregnancy and that she "very possibly" had an affair with one of half a dozen men.

Plaintiff testified that, after she learned about her pregnancy in September 1998, she told defendant she would leave him if he did not seek psychological counseling. Plaintiff further testified that defendant declined to seek help and that the couple separated on or about October 31, 1998. Plaintiff filed for divorce on December 3, 1998. On the same date, the trial court entered an ex-parte injunctive order prohibiting either party from transferring, selling, encumbering or otherwise disposing of the parties' assets and property. In her complaint, plaintiff alleged a breakdown in the marital relationship based on defendant's behavior during the marriage and requested legal and physical custody of the child. On December 21, 1998, defendant filed a counter-complaint for divorce and also alleged a breakdown of the marital relationship, based on plaintiff's behavior during the marriage. Defendant also requested joint legal and physical custody of the child if paternity could be established.

A seven-day trial commenced on October 12, 1999, during which the parties presented proofs regarding the breakdown of the marriage, their accumulated assets, and issues relating to the custody of the child. Following trial, the court made findings of fact from the bench and entered a Judgment of Divorce on December 2, 1999.¹

II. Analysis

A. Property Distribution

Defendant contends that the trial court erred in its division of the parties' assets. We disagree.

In reviewing a trial court's dispositional ruling in a divorce case, this Court first reviews "the trial court's findings of fact for clear error and then decide[s] whether the dispositional ruling was fair and equitable in light of the facts." *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). This Court will not disturb a trial court's property disposition rulings "unless we are left with the firm conviction that the distribution was inequitable." *Id.*

¹ The trial court denied defendant's motion for reconsideration or rehearing on January 19, 2000.

In *Sparks v Sparks*, 440 Mich 141; 485 NW2d 893 (1992), our Supreme Court clarified the factors a trial court should consider in its dispositional ruling:

We hold that the following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. *Perrin v Perrin*, 169 Mich App 18, 22; 425 NW2d 494 (1988). There may even be additional factors that are relevant to a particular case. [*Sparks*, *supra* at 150-160.]

The trial court did not clearly err in its findings of fact. The court determined, based on the above factors, that, while this was a short marriage, both parties contributed fairly equally to the marital property, and both earned good incomes. The record supports these findings. Plaintiff filed for divorce after approximately two and a half years of marriage. Further, both parties earned substantial incomes during the marriage. Plaintiff testified that she earned \$65,000 to \$72,000 per year in 1996 and that her salary steadily increased to \$92,000 per year at the time of trial. Defendant earned between \$80,000 and \$90,000 per year in 1996 and he testified that his earnings increased to \$210,000 in 1998. Moreover, based on their educational background, the parties both have above-average future earning abilities.

The record also supports the trial court's finding that both parties contributed to the marital estate. Plaintiff and defendant contributed to their individual retirement, pension and stock purchase plans through their employers prior to and during the marriage. The record indicates that defendant purchased the condominium in which the parties lived and that both parties contributed to their living expenses. Indeed, defendant's attorney acknowledged that both parties contributed a similar amount during the marriage during in his closing argument. We further note that plaintiff was unemployed during the last several months of the marriage, but the record indicates that he received some severance pay and that plaintiff continued to contribute her earnings to their daily maintenance. Moreover, plaintiff used \$20,000 of her premarital savings to bankroll their Merrill Lynch investment accounts in 1996. Accordingly, while defendant's salary was higher during much of the marriage, the evidence clearly reflects an equality of contribution.

The trial court also determined that defendant's conduct caused the breakdown of the marriage. This finding was amply supported by the record. Defendant's unrelenting fears regarding the possibility that Allied Signal might damage his professional and personal reputation took a devastating toll on his relationship with plaintiff. The record is replete with evidence that defendant made that issue his sole focus after the parties returned from Europe and even during counseling which was meant to salvage their relationship. It is also abundantly clear that defendant turned his hostility and suspicions toward plaintiff and expressed this antagonism throughout the last several months of their marriage. The trial court declined to find defendant "at fault in the strict sense" because the court concluded that defendant suffered from a psychological condition that contributed to his behavior. However, the trial court emphasized that plaintiff had no fault in the marital breakdown and that "[s]he appeared to do everything she could to try to save this marriage, and she wasn't getting any cooperation" The trial court's

findings were clearly correct, based on a record full of examples of defendant's hostile and uncooperative behavior.

In light of these facts, the trial court's property division was clearly fair and equitable. The court valued the parties' assets as of the date of separation which was within the trial court's sound discretion. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). The trial court allowed each party to keep their retirement, pension and stock purchase plan accounts to which they each contributed through their employers both before and during the marriage.² Though the parties offered different estimates of the value of these accounts, based on the evidence presented at trial, we calculate that the parties' employment accounts had virtually equal value as of the date of separation. Accordingly, the trial court's decision to allow each party to keep their individual accounts was clearly equitable.

We also find that, based on the facts of this case, the trial court fairly divided the equity in the condominium. The proceeds from the sale of the condominium, \$57,356, were placed in escrow during trial. The trial court ultimately awarded plaintiff \$31,000 and awarded defendant \$26,356. While the record indicates that defendant purchased the home prior to the marriage, the record clearly indicates that the parties used the condominium as their marital home and that they intended to own it jointly because they placed the condominium in a joint, revocable living trust and changed the deed to reflect both parties' names. The trial court indicated that, based on defendant's spending during the marriage, it would award plaintiff additional equity in the home. The record also indicates that plaintiff regularly contributed to the household and spent several thousand dollars in remodeling the home prior to the marriage. We further note that, despite the trial court's more favorable distribution of the condominium equity to plaintiff, the trial court awarded defendant all of the parties' Microsoft stock, worth \$12,000. Under the circumstances, the trial court's decision was clearly equitable.

B. Attorneys Fees

Defendant contends that the trial court erred in ordering him to pay \$9,000 of plaintiff's attorney fees.

In *Donahue v Donahue*, 134 Mich App 696, 701; 352 NW2d 705 (1984), this Court stated:

This Court has generally followed the rule that "attorney fees are not awarded as a matter of right but only if necessary to enable a party to carry on or defend the litigation."

Nevertheless, the rule is not hard and fast and under special circumstances may not be followed. The allowance of attorney fees basically rests in the sound

² Plaintiff testified that she contributed ten percent of her income to her employment accounts before she was married and that she continued to contribute ten percent during the marriage. Defendant maintained that plaintiff increased her contribution after they married, based on their dual income. However, it was for the trial court to determine the credibility of the parties on that issue.

discretion of the court, and will be overturned only where manifest abuse of discretion can be shown. [Citations omitted.]

The Court found such special circumstances in *Donahue* because “defendant’s actions cause plaintiff to incur those costs.” *Id.* at 702. The Court explained:

It would be inequitable to require plaintiff to pay for expenses which never would have occurred if defendant had conducted himself in an honest and conscientious manner.

Here, the trial court did not abuse its discretion in ordering defendant to pay one-fifth of plaintiff’s attorney fees. As the trial court correctly ruled, defendant’s actions caused plaintiff to incur attorney fees that would have been unnecessary if he “had conducted himself in an honest and conscientious manner.” *Donahue, supra* at 702. The record reflects that plaintiff was forced to file two show cause motions to compel defendant to comply with the stipulated psychological examination order.

Further, defendant caused plaintiff to pursue matters relating to defendant’s violations of the court’s prohibition on disposing of assets from the marital estate. Moreover, defendant caused plaintiff to prepare and defend against his denial of paternity, even after he knew his paternity was 99.99% certain, which took significant time at trial. We further note that the record indicates that, at defendant’s behest, defendant’s attorney engaged in repetitive questioning and recalled witnesses to elicit testimony regarding facts already well-established in the record. The trial court’s decision to order defendant to pay \$9,000 of plaintiff’s attorney fees was clearly justified under these circumstances and no abuse of discretion occurred.³

Affirmed.⁴

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski

³ Defendant contends that the trial court erred in granting a lien against his assets for the payment of fees incurred by his former attorney’s firm, Denise Alexander, PLC. On June 23, 1999, defendant stipulated to the entry of an order of withdrawal of Denise Alexander of Denise Alexander, PLC, and the award of a lien against defendant’s assets for \$6,656.13. Defendant did not object to or dispute the existence or amount of the attorney’s lien in the trial court, except to request a stay pending an investigation by the attorney grievance commission. The trial court granted the release based on defendant’s failure to challenge the effect or basis of the lien. We hold that defendant has waived this claim by failing to challenge properly challenge it in the trial court.

⁴ Because we affirm the trial court’s judgment, we need not address defendant’s request to disqualify the trial judge on remand. We note, however, that defendant’s claim of judicial bias is wholly unsupported by the record.